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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION**

CHASOM BROWN, WILLIAM BYATT,
 JEREMY DAVIS, CHRISTOPHER
 CASTILLO, and MONIQUE TRUJILLO,
 individually and on behalf of all others
 similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:20-cv-03664-LHK

~~PROPOSED~~ JOINT STIPULATION
 AND ORDER RE: EXPERT
 DISCOVERY

1 The parties to the above-referenced action, through their respective counsel of record,
 2 hereby stipulate to the following regarding the scope of expert discovery relating to all testifying
 3 experts and non-testifying experts or expert consultants in this matter.

4 1. Except as provided otherwise in this Stipulation, expert discovery shall be
 5 governed by the Federal Rules of Civil Procedure and any other applicable rule. This Stipulation
 6 does not set or alter the time for any disclosure required by Federal Rule of Civil Procedure
 7 26(a)(2)(B) or the timing of any deposition of any testifying expert.

8 2. To the extent that this Stipulation imposes limitations on discovery that would
 9 otherwise be available under the Federal Rules of Civil Procedure, the parties have agreed to
 10 those limitations to increase the efficiency of their dealings with testifying experts and to
 11 minimize discovery disputes regarding testifying experts. Neither the terms of this Stipulation
 12 nor the parties' agreement to them shall be considered an admission by any person that any of
 13 the information restricted from discovery by this Stipulation would otherwise be discoverable
 14 or admissible.

15 3. Except as provided in paragraphs 5 and 6 below, the following types of
 16 information shall not be the subject of any form of discovery, and the parties shall not be
 17 obligated to preserve such information in any form or include such information on any privilege
 18 log:

19 a. the content of oral, written or other communications among and between:

- 20 i. counsel and the expert and/or the expert's staff and/or supporting firms;
- 21 ii. counsel and any non-testifying expert consultant and/or the consultant's
 22 staff;
- 23 iii. a party and the expert and/or the expert's staff and/or supporting firms;
- 24 iv. a party and any non-testifying expert consultant and/or the consultant's
 25 staff;
- 26 v. the expert and other experts and/or other non-testifying expert
 27 consultants;

- vi. the expert and their staff and/or supporting firms;
- vii. non-testifying expert consultants and their staffs;
- viii. the expert and the respective staffs and/or supporting firms of other experts or non-testifying expert consultants;
- ix. non-testifying expert consultants and the respective staffs and/or supporting firms of other experts or non-testifying expert consultants; and/or
- x. the respective staffs and/or supporting firms of experts or non-testifying expert consultants and the staffs and/or supporting firms of other experts or non-testifying expert consultants.¹

b. notes, drafts, written communications, preliminary or intermediate calculations, computations, or other types of preliminary work created by, for, or at the direction of a testifying expert in connection with this matter (aside from the final written expert report(s) and notes generated while testifying), including copies of documents produced by any party bearing the notes, markings, or comments of any of the following persons or their staff or agents: the expert, other expert witnesses, non-testifying experts, consultants or outside or in-house attorneys for the party or parties.

4. Except as provided in paragraphs 5 and 6 below, no party or their experts are obligated to preserve or produce budgets, invoices, bills, receipts or time records concerning the work performed by testifying or non-testifying expert witnesses or consultants, their staff, assistants, colleagues, associates, or other agents, or their companies or organizations, relating to the report, testimony, or services provided in this matter.

5. The limitations contained in paragraphs 3 and 4 above shall not apply to any communications, documents, calculations, computations or other forms of information or work

¹ For avoidance of doubt, suggestions from outside counsel regarding revisions to the form of the expert's report, or additional support for the expert's ultimate opinions are examples of the kind of communications that, under paragraph 3(a), are not subject to discovery.

1 upon which a testifying expert relies as a basis for any of his or her opinions or reports. To the
 2 extent a testifying expert relies on an assumption provided by counsel, the assumption—but not
 3 the communication(s) between counsel and the testifying expert concerning that assumption—
 4 must be disclosed.

5 6. Notwithstanding the limitations contained in paragraphs 3 and 4 above, a
 6 testifying expert may be asked to respond to reasonable questions regarding the hourly rates of
 7 the expert and his or her staff, the amount of time an expert or that expert's staff has spent on
 8 the expert's report and associated work, and the amount of money billed for the report and
 9 associated work.

10 7. Within three business days of any party serving any expert report and/or expert
 11 declaration pursuant to Fed. R. Civ. P. 26(a)(2)(B) or otherwise, the party or parties proffering
 12 the expert witness shall produce: the documents, data or other information relied upon by the
 13 expert witness in forming the expert witness's opinions; any exhibits that will be used to
 14 summarize or support the expert witness's opinions; and any work product (including but not
 15 limited to, analyses, spreadsheets, graphs, and charts) relied upon by the expert witness that is
 16 based on the output from any computer programs that are produced.² All other disclosures
 17 required by Fed. R. Civ. P. 26(a)(2)(B) will be served at the time of the report. "Documents,
 18 data or other information relied upon" shall include underlying schedules, spreadsheets, coding,
 19 or other information sufficient to reconstruct the work, calculations, and/or analyses upon which
 20 the expert witness is relying for his or her opinions.

21 8. The information required by paragraph 7 above shall be produced electronically
 22 (via email, disc or FTP site) where feasible. Data, statistical analyses, or other information
 23 (including any calculation or exhibit) upon which an expert relies for any of his or her opinion(s)
 24 in this matter shall be provided in machine readable format, including any data that has been
 25

26 _____
 27 ² Notwithstanding the obligation to disclose documents, data, or other information "relied on"
 28 by the expert witness, documents, data, or other information that is merely "considered by" the
 expert witness do not need to be disclosed.

1 cleaned, reformatted, or modified in any way from the form in which it may have been provided
2 to the expert. All other documents, data, and other information relied upon shall be provided in
3 a format as agreed to by the parties, along with any software and instructions required to read
4 them, but no party need produce computer software that is reasonably and commercially
5 available (e.g., Microsoft Word, Excel). Documents that are publicly available need not be
6 produced if they are available online for free at an internet address identified in the expert's
7 report/declaration. Documents that have previously been produced during discovery need not be
8 produced if they are identified by Bates number.

9 9. Paragraph 7 above is not intended to limit the ability of any party to prepare and
10 use demonstrative exhibits, including demonstrative exhibits that may relate to an expert's
11 testimony, during the course of any argument, hearing or trial. The admissibility of any such
12 demonstrative exhibits shall be subject to the Federal Rules of Evidence and the Federal Rules
13 of Civil Procedure unless otherwise provided by order of the Court. The parties agree to meet
14 and confer before the close of expert discovery regarding the timing and procedure for
15 exchanging demonstratives that may be used with experts during a hearing, trial, or other
16 proceeding.

17 10. No subpoenas (for depositions or documents) need be served on any testifying
18 expert from whom a report or declaration is provided. Instead, the party proffering such expert
19 will (a) be responsible for producing all materials and information required by the Federal Rules
20 of Civil Procedure or this Stipulation, and (b) make the expert available for deposition at a time
21 mutually agreed to by the parties and consistent with the Court's scheduling orders. To the extent
22 the testifying expert is also a percipient witness, if otherwise permissible under the Federal Rules
23 of Civil Procedure and the Local Rules, the opposing party is not precluded from serving a
24 subpoena for depositions or documents on such witness seeking the witness's percipient
25 testimony or documents.

26 11. Nothing in this Stipulation shall permit a party or a testifying expert to withhold
27 any proposition, fact, belief or other data, information or material (including any assumption)

on which the expert relies in support of her or his opinion(s) in this matter or that is otherwise discoverable by order of the Court.

12. The parties agree to comply with this Stipulation pending the Court's approval.

IT IS SO STIPULATED.

Dated: September 13, 2021

QUINN EMANUEL URQUHART &
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BOIES SCHILLER FLEXNER LLP

/s/ Andrew H. Schapiro

/s/ Mark C. Mao

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Attorneys for Plaintiffs

ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)

I, Mark C. Mao, attest that concurrence in the filing of this document has been obtained from the other signatories. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of September, at San Francisco, California.

/s/ Mark C. Mao
Mark C. Mao

~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: September 14, 2021



HON. SUSAN VAN KEULEN
UNITED STATES MAGISTRATE JUDGE